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10/511,688	06/06/2005	Michael Baldischweiler	WACHP002	4067
25920	7590	07/22/2008		
MARTINE PENILLA & GENCARELLA, LLP			EXAMINER	
710 LAKEWAY DRIVE			FRANCIS, MARK P	
SUITE 200			ART UNIT	PAPER NUMBER
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/511,688	<b>Applicant(s)</b> BALDISCHWEILER ET AL.
	<b>Examiner</b> MARK P. FRANCIS	<b>Art Unit</b> 2193

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If no period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED. (35 U.S.C. § 133).

Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### **Status**

1) Responsive to communication(s) filed on 06 June 2005.  
 2a) This action is FINAL.      2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### **Disposition of Claims**

4) Claim(s) 1-3 and 11-27 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 1-3 and 11-27 is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### **Application Papers**

9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on 14 October 2004 is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### **Priority under 35 U.S.C. § 119**

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### **Attachment(s)**

1) Notice of References Cited (PTO-892)  
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)  
 3) Information Disclosure Statement(s) (PTO/SB/08)  
 Paper No(s)/Mail Date 7/06/07

4) Interview Summary (PTO-413)  
 Paper No(s)/Mail Date. \_\_\_\_\_.  
 5) Notice of Informal Patent Application  
 6) Other: \_\_\_\_\_

**DETAILED ACTION**

1. This action is responsive to the application filed on June 6, 2005.
2. Claims 1-27 have been examined.

***Oath/Declaration***

3. The Office acknowledges receipt of a properly signed oath/declaration filed June 06, 2005.

***Claim Rejections - 35 USC § 112***

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 1-27 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claims 1,17, and 24, where it states, "code fragments which correspond, at least in respect of their effect," renders the claim to be indefinite. It is not clear what exactly the compiler generated program code is being search for regarding the program code fragments. Applicants' statement in claims 1, 17, and 24 of "at least in respect of their effect" is very relative and not clearly defined. Therefore the claims are rejected under 35 U.S.C. 112 2<sup>nd</sup> Paragraph for being Indefinite.

The rejection of the independent claims are incorporated into their dependent claims.

Appropriate correction is required.

**Claim Rejections - 35 USC § 101**

6. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

7. Claims 17- 27 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

With respect to claim 17, this claim recites a computer program product comprising program instructions(*software*) for a general-purpose computer that will cause the computer to optimize code(*software*) that includes searching the compiler generated code for code fragments that correspond to one of several predefined library code fragments and replacing the identified source code fragments with a respective call to the corresponding predefined library function.

Although Applicant claims a computer program product for a general purpose computer, the computer program product is not tangibly embodied in hardware or a processor for execution therefore, the Claim is interpreted as comprising of software means only and is rejected under 35 U.S.C. 101 as being Non-Statutory.

With respect to claim 24, this claim recites a portable data carrier(*software*) having a processor core,(*software*) a first memory area(*software*) and a second memory area(*software*) for optimizing program code that includes searching the compiler generated code for code fragments that correspond to one of several predefined library code fragments and replacing the identified source code fragments with a respective call to the corresponding predefined library function. All of which is functional descriptive material that can be implemented using software means only(i.e. computer programs per se) without requiring the need of hardware for execution. The processor core is software code that is located inside the portable data carrier that assists in program execution.

As a suggestion, Applicant could delete the word "core" after the phrase "processor core" to the preamble of the independent claims to overcome the software means only part of this 101rejection.

The rejection of the base claims are incorporated into their dependent claims.

Appropriate correction is required.

***Claim Rejections - 35 USC § 102***

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

9. Claims 1-3, 11-17, and 19-27 are rejected under 35 U.S.C. 102(e) as being anticipated by Siska. (U.S. Pat 6,263,429)

With respect to claims 1 and 17, Siska discloses a method for optimizing(Col 8:1-5, "...the greatest compression...") compiler-generated program code intended for a portable data carrier(Col 3:10-25, "...processor chip...",Col 7:18-30, "...a plurality of interconnects to other components within a device/system...") having a processor core(Col 7:19-30, "...contains an embedded processor...") and a first (Col 7:23-30, "...non-cache memory...")and second memory area, (Col 7:23-35, "...cache memory 206...") comprising:

the first memory area being provided to receive the optimized program code,(Col 7:29-40, "...The non-cache memory...for at least one program which can be further subdivided into individual lines of code...") the second memory area being provided to receive a predefined library having a multiplicity of library code fragments,(Col 7:25-40, "...The cache memory preferably includes a Micro Code Area...") and the compiler-generated program code being searched for program code fragments which correspond, at least in respect of their effect, to respectively one library code fragment, (Col 7:42-58, "...searching a program for identical sequences of lines of code ...",Col

8:47-63, "...the program may be searched to identify sequences of lines of code..."") the program code fragments found thereby being replaced by respectively one call of the corresponding library code fragment. (Col 8:1-20, "...by a microcall results in the greatest compression...", Col 8:24-35, "...each sequence of lines of code in the collection is replaced in the program by a microcall..." ,Col 9:60-67, "...each microcall preferably contains an identification of the previously identified microroutine..."")

With respect to claim 24, Siska discloses a portable data carrier(Col 3:10-25, "...processor chip...",Col 7:18-30, "...a plurality of interconnects to other components within a device/system...") having a processor core, (Col 7:19-30, "...contains an embedded processor...") a first memory area(Col 7:29-40, "...The non-cache memory...for at least one program which can be further subdivided into individual lines of code...") and a second memory area, (Col 7:25-40, "...The cache memory preferably includes a Micro Code Area...") there being contained in the first memory area optimized program code, (Col 7:29-40, "...The non-cache memory...for at least one program which can be further subdivided into individual lines of code...")and there being contained in the second memory area a library which is predefined independently of the optimized program code(Col 7:25-40, "...The cache memory preferably includes a Micro Code Area...") and has a multiplicity of library code fragments,(Col 7:25-40, "...within which microroutines are suitably stored...") wherein the optimized program code has been obtained from compiler-generated program code by searching for program code fragments which correspond, at least in respect of their effect, to respectively one library

code fragment, (Col 7:42-58, "...searching a program for identical sequences of lines of code ...", Col 8:47-63, "...the program may be searched to identify sequences of lines of code...") the program code fragments found thereby being replaced by respectively one call of the corresponding library code fragment. (Col 8:1-20, "...by a microcall results in the greatest compression...", Col 8:24-35, "...each sequence of lines of code in the collection is replaced in the program by a microcall...", Col 9:60-67, "...each microcall preferably contains an identification of the previously identified microroutine...")

**Dependent claims**

With respect to claims 2,19, and 25, the rejection of claims 1,17, and 24 are incorporated respectively and further Siska discloses that a program code fragment is replaced by a library code fragment only if both code fragments are identical in their form as executable machine code. (Col 7:40-55, "searching a program for identical sequences of lines of code...")

With respect to claim 3, the rejection of claim 1 is incorporated and further discloses that at least some library code fragments are parameterized. (Col 9:55-67, "...adds the replacement elements for each sequence of lines of code which makes each sequence Substantially Similar...as parameters of the specific microcall...")

With respect to claims 11 and 20, the rejection of claims 1 and 17 are incorporated respectively and further Siska discloses that a program code fragment to be replaced is replaced, at least if the program code fragment does not interfere with the program flow, by a subroutine call instruction to the corresponding library code fragment. (Col 8:1-15, "...by a microcall results in the greatest compression...each sequence of lines of code in the collection is replaced in the program by a microcall to the saved information...")

With respect to claims 12 and 21, the rejection of claims 1 and 17 are incorporated respectively and further Siska discloses that the compiler-generated program code exists in the form of assembler source code, and the optimization procedure is performed on a source code level. (Col 5:33-45, "...utilized on individual code modules, linked executables, non-embedded processor programs...")

With respect to claims 13,22 and 26, the rejection of claims 1,17 and 24 are incorporated respectively and further Siska discloses that the predefined library is matched to at least one of the following: the hardware of the portable data carrier, an operating system of the portable data carrier,(Col 8:35-50, "...Another criterion for ending the compression processing...") and a compiler used in the generation of the compiler-generated program code. (Col 5:35-50, "...utilized on individual code modules, linked executables...")

With respect to claim 14, the rejection of claim 1 is incorporated and further Siska discloses that the first memory area is electrically programmable. (Col 13:20-35, "...is compressed and then accessed via RAM,...")

With respect to claim 15, the rejection of claim 1 is incorporated and further Siska discloses that the second memory area is mask-programmable. (Col 13:10-20, "...is stored in ROM...")

With respect to claim 16, the rejection of claim 1 is incorporated and further Siska discloses that the first memory area occupies more chip area per memory cell in the portable data carrier than is occupied by the second memory area. (Col 13:10-30, '...in an uncompressed format, in an area of ROM identified...")

With respect to claims 23 and 27, the rejection of claims 17 and 24 are incorporated respectively and further Siska discloses that the first memory area is electrically programmable, (Col 13:20-35, "...is compressed and then accessed via RAM,...") and the second memory area is mask-programmable, (Col 13:10-20, "...is stored in ROM...")

and the first memory area occupies more chip area per memory cell in the portable

data carrier than is occupied by the second memory area. (Col 13:10-30, "...in an uncompressed format, in an area of ROM identified...")

***Claim Rejections - 35 USC § 103***

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

11. Claim 18 is rejected under 35 U.S.C. 103(a) as being unpatentable over Siska(U.S. Pat 6,263,429) in view of Wilkinson.(U.S. PGPUB 2008/0115117)

With respect to claim 18, the rejection of claim 17 is incorporated and further,

Siska does not disclose that the program instructions additionally implement a compiler for converting a high-level language source code into the compiler-generated program code.

Wilkinson discloses that the program instructions additionally implement a compiler for converting a high-level language source code into the compiler-generated program code(Col 28:claim 28:stepa), "...a compiler for compiling application source programs

written in high level language source code...") in an analogous system for the purpose of translating high-level source code into assembly level or machine level source code.

Therefore, it would have been obvious to a person of ordinary skill in the art at the time of the invention to include a compiler that translates high-Level source code into compiler-generated program code.

The modification would have been obvious because one of ordinary skill in the art would have been motivated to translate high-level source code into assembly level or machine level source code.

### ***Conclusion***

12. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.
13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to MARK P. FRANCIS whose telephone number is (571)272-7956. The examiner can normally be reached on Mon-Fri 8:00-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lewis Bullock can be reached on (571)272-3759. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Mark P. Francis

Patent Examiner

Art Unit 2193

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